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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-967; C-570-968

Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On January 20, 2016, the United States Court of International Trade (CIT or Court) sustained the Department of Commerce's (Department) third and final results of redetermination,¹ in which the Department determined, under protest, that certain refrigerator/freezer trim kits meet the description of excluded finished goods kits and are therefore not covered by the scope of the *Orders*,² pursuant to the CIT's remand order in *Meridian LLC v. United States*, Court No. 13-00018, Slip Op. 15-67 (CIT June 23, 2015) (*Meridian IV*).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,³ as clarified by *Diamond Sawblades*,⁴ the Department is notifying the public

¹ See *Meridian LLC v. United States*, Court No. 13-00018, Slip Op. 16-5 (CIT January 20, 2016) (*Meridian V*), which sustained the Final Results of Redetermination Pursuant to Court Remand, *Meridian Products, LLC v. United States*, Court No. 13-00018, Slip. Op. 15-67 (Oct. 29, 2015) (Third Remand).

² See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*Orders*).

³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

that the Court's final judgment in this case is not in harmony with the Department's Final Scope Ruling on Refrigerator Trim Kits and is therefore amending its final scope ruling.⁵

DATES: Effective date: January 30, 2016

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-3965.

SUPPLEMENTARY INFORMATION: On December 17, 2012, the Department issued its Final Scope Ruling on Refrigerator Trim Kits in which it determined that the refrigerator/freezer trim kits imported by Meridian LLC (Meridian) did not meet the scope exclusions for "finished merchandise" and "finished goods kits."⁶ In particular, the Department held that because the trim kits at issue consisted of pieces of aluminum extrusions plus fasteners and extraneous materials, they did not meet either scope exclusion. Therefore, the Department found the products at issue to be within the scope of the *Orders*.⁷

As discussed in further detail in the Third Remand, the Court remanded the Final Scope Ruling on Refrigerator Trim Kits three times.⁸ Most recently, in *Meridian IV*, the Court held that the Department's long-standing recognition of a "fasteners" exception to the "finished goods kit" exclusion is unreasonable, finding that "the inclusion of 'fasteners' or 'extraneous materials' is not determinative when qualifying a kit consistent of multiple parts which otherwise meets the

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Certain Refrigerator/Freezer Trim Kits," (December 17, 2012) (Final Scope Ruling on Refrigerator Trim Kits).

⁶ The finished goods kit exclusion states: "A finished goods kits is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product." The scope further states that, "{a}n imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product."

⁷ See Final Scope Ruling on Refrigerator Trim Kits at 11.

⁸ See Third Remand at 6-10.

exclusionary requirements, as a ‘finished goods kit.’”⁹ Additionally, the Court explained that there is nothing in the scope language that indicates that the parts of a finished goods kit cannot consist entirely of aluminum extrusions.¹⁰ The Court explained that “to qualify as a ‘finished goods kit’, a kit must contain every part required to assemble the final finished good, and it logically follows that if a kit is imported with all of the parts necessary to fully assemble the kit into its final finished form, then obviously (and necessarily) some of those ‘parts’ may be fasteners.”¹¹

In the Third Remand, the Department found, in accordance with the Court’s instructions in *Meridian IV*, under respectful protest, that Meridian’s trim kits are excluded from the scope of the *Orders* as finished goods kits because at the time of importation, the kits contained all the parts necessary to assemble a final finished good – a complete trim kit.¹² In *Meridian V*, the Court sustained the Third Remand in its entirety.¹³

Timken Notice

In its decision in *Timken*¹⁴ as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s January 20, 2016, judgment in *Meridian V* sustaining the Department’s decision in the Third Remand to find that Meridian’s trim kits are excluded from the scope of the *Orders* constitutes a final decision of that court that is not in harmony with the Department’s Final Scope

⁹ See *Meridian IV*, Slip Op. 15-67 at 12-13.

¹⁰ *Id.*

¹¹ *Id.* at 14 (emphasis omitted).

¹² See Third Remand at 14.

¹³ See *Meridian V*, Slip Op. 16-5 at 4.

¹⁴ See *Timken*, 893 F.2d at 341.

Ruling on Refrigerator Trim Kits. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the trim kits at issue pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

In accordance with the Courts instructions in *Meridian IV*, we determine that Meridian's trim kits are excluded from the scope of the *Orders* as finished goods kits.

Amended Final Determination

Because there is now a final court decision with respect to the Final Scope Ruling on Refrigerator Trim Kits, the Department amends its final scope ruling. The Department finds that the scope of the *Orders* does not cover the products addressed in the Final Scope Ruling on Refrigerator Trim Kits. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for the refrigerator/freezer trim kits imported by Meridian. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of Meridian's Refrigerator Trim Kits without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Dated: February 8, 2016.

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